

**Water Quality Standards Advisory Committee**

**Legislative Study Working Groups**

**MEETING MINUTES**

**Wednesday, May 26, 2010 9:00 am – 12:30 pm**  
**Department of Environmental Services**  
**Rooms 112/113/114**  
**29 Hazen Drive, Concord, NH**

**Surface Water Definition Working Group**

Attendees

|                  |                  |                    |                   |
|------------------|------------------|--------------------|-------------------|
| Ellen Weitzler   | EPA              | Donald Ware        | NHWWA             |
| Diane Hanley     | LMAC             | Bill Schroeder     | NH Lakes          |
| David Deen       | CRJC             | Jasen Stock        | NHTOA             |
| Donna Hanscom    | NHWPCA           | Larry Morse        | NHANRS            |
| Jim Fitch        | Woodard & Curran | Collis Adams       | DES               |
| John Hodsdon     | NH Farm Bureau   | Rep. Jim McClammer | House RR&D        |
| Peter Rice       | NHMA             | Rep. Judith Spang  | House RR&D, Chair |
| Mike Metcalf     | Underwood Eng.   | Rep. Mike Kappler  | House RR&D        |
| Jillian McCarthy | DES              | Paul Currier       | DES               |
| Ken Edwardson    | DES              | Ted Walsh          | DES               |
| Brandon Kernen   | DES              | Jeff Andrews       | DES               |
| Phil Trowbridge  | DES              | Ken Rhodes         | CLD/AGC           |

Issues discussed

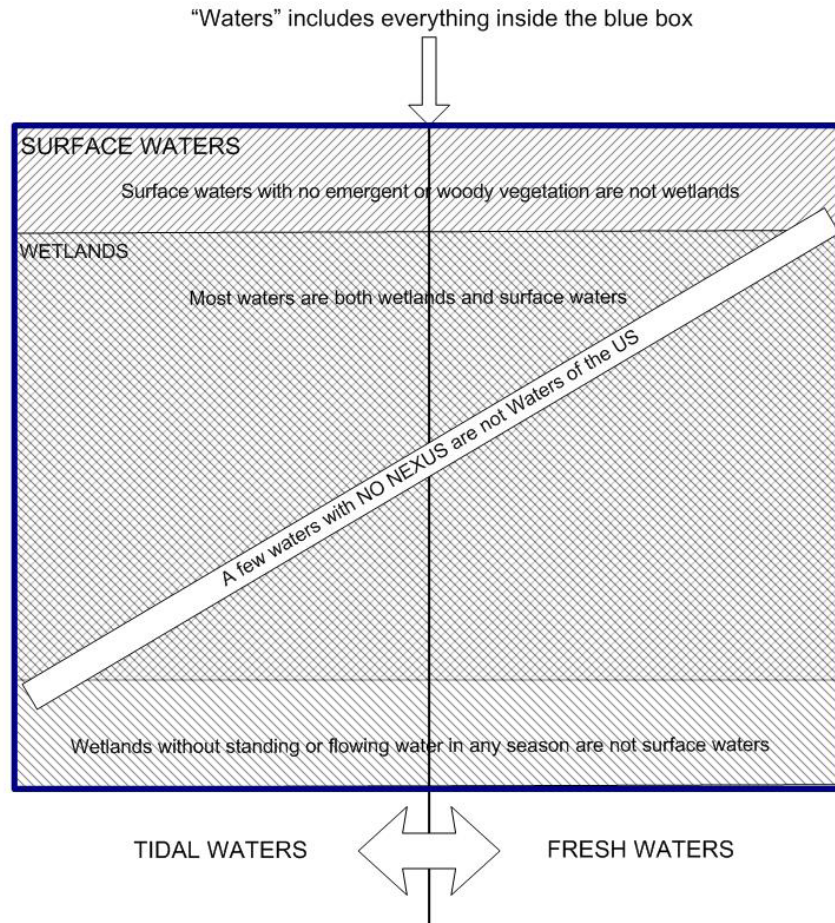
The minutes from 5/10/10 need to be changed. Add Ellen Weitzler to attendee list. Correct spelling of Rapanos on page 2.

Paul Currier handed out a diagram which summarized proposed changes to definitions in RSA 485-A that would be consistent with RSA 482-A (see diagram).

The group felt that this diagram was helpful but that the “wetlands without standing water” box should be relatively larger to reflect the large number of wetlands in this category. Also, the definition of “surface waters” should be amended to explicitly include wetlands to avoid confusion.

The group discussed whether man-made basins and conveyances would be subject to wetlands regulation. Collis Adams provided information on wetlands permitting exemptions for man-made waterbodies.

There was concern that changing references to “surface waters” to just “waters” could affect many laws and rules. There was a recommendation to identify the laws and rules that would be affected by this change.



"Waters of the state or waters" means tidal waters, fresh waters, and wetlands.

"Tidal waters" means wherever the tide ebbs and flows [From RSA 482-A:4]

"Fresh waters" means wherever fresh water flows or stands during any season of the year [From RSA 482-A:4]

"Wetlands" means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. [From RSA 482-A:2]

"Surface waters" means fresh waters and tidal waters, including but not limited to rivers, streams, lakes, ponds, impoundments and tidal waters. [from Env-Wt 101.91]

#### Action items

The following action items are to be addressed prior to the next working group meeting:

- DES will circulate a draft of RSA 485-A with all instances of "surface waters" changed to "waters" and flagged. DES will check for unintended consequences.
- DES will review the definition of surface waters and consider changes to clarify that many wetlands are surface waters (i.e., wetlands with standing water).
- DES will update the discussion paper on surface water definitions.

## **Antidegradation Working Group**

### Attendees

|                 |                  |                  |                     |
|-----------------|------------------|------------------|---------------------|
| Ted Walsh       | NHDES            | John Hodsdon     | NH Farm Bureau      |
| Collis Adams    | NHDES            | Judith Spang     | State Rep           |
| Sue Gottling    | State Rep        | Peter Rice       | NH Municipal Assoc  |
| Bill Schroeder  | NH Lakes         | Mike Metcalf     | Underwood Engineers |
| L. Mike Kappler | State Rep        | Donald Ware      | NHWWA               |
| Eric Williams   | NHDES            | Larry Morse      | NHANRS              |
| David Deen      | CRWC             | Paul Currier     | NHDES               |
| Jim McClammer   | State Rep        | Jillian McCarthy | NHDES               |
| Donna Hanscom   | NHWPCA           | Diane Handley    | LMAC                |
| Phil Trowbridge | NHDES            | Jasen Stock      | NHTOA               |
| Jim Fitch       | Woodard & Curran | Ellen Weitzler   | EPA R1              |
| Ken Rhodes      | CLD/AGC          |                  |                     |

### Issues discussed

**Chairperson Ken Rhodes** facilitated the discussion. The minutes from the May 10, 2010 antidegradation working group meeting were approved. **Chairperson Rhodes** informed the group that he met with Jillian McCarthy (DES staff assigned to the working group) and Paul Currier on Monday May 17, 2010 to discuss the antidegradation portions of HB 1305 and the proposed amendments to that language from the May 10, 2010 working group meeting. The proposed amendments were included in the meeting materials for today's meeting and were intended to simplify the language, specify the difference between existing water quality uses and existing land uses, and to take out section V. **Chairperson Rhodes** noted that, depending on the outcome of the Surface Water Definitions Working Group, the term "surface waters" may need to be changed to "waters".

**Rep. Spang** asked if the legislature could get rid of the classification system if DES adopts criteria for antidegradation. **Paul Currier** responded that we would still need the classification system and that antidegradation overlays the classification system.

There working group discussed antidegradation implementation and **Chairperson Rhodes** reminded the working group that implementation would be worked out in rulemaking and not as part of this legislative process.

### Action items

The following action items are to be addressed prior to the next working group meeting:

- Jillian McCarthy will send out the NHDES Antidegradation Fact Sheet to the working group.
- The Antidegradation Discussion Paper will be revised to include justification for the removal of section V. from the draft proposed legislation in HB 1305 relative to antidegradation.
- Ellen Weitzler, EPA Region 1, will consult with the EPA legal counsel to determine if removing the language in section V. of the draft proposed legislation in HB 1305 relative to antidegradation would be allowed.

## **Designated Uses Working Group**

### Attendees

|                |                     |                    |                   |
|----------------|---------------------|--------------------|-------------------|
| Ken Rhodes     | CLD/AGC             | Rep. Jim McClammer | House RR&D        |
| Mike Metcalf   | Underwood Eng.      | Rep. Judith Spang  | House RR&D, Chair |
| Larry Morse    | NHANRS              | Rep. Mike Kappler  | House RR&D        |
| Ellen Weitzler | EPA                 | Paul Currier       | DES               |
| David Deen     | CRJC                | Phil Trowbridge    | DES               |
| Shelly Frost   | NH EnviroStrategies | Jillian McCarthy   | DES               |
| Diane Hanley   | LMAC                | Ken Edwardson      | DES               |
| Bill Schroeder | NH Lakes            | Brandon Kernen     | DES               |
| Jasen Stock    | NHTOA               | Paul Susca         | DES               |
| John Hodsdon   | NH Farm Bureau      | Ted Walsh          | DES               |
| Jim Fitch      | Woodard & Curran    | Shane Csiki        | NHGS              |
| John Boisvert  | NHWWA               | Jeff Andrews       | DES               |

### Issues discussed

**Rep. Judith Spang**, working group chair, facilitated the discussion. The minutes from the May 10, 2010 designated uses working group meeting were approved.

**Paul Currier** gave a powerpoint presentation to describe the water quality standards, designated uses, and water quality criteria. He also gave examples of the type of information available for New Hampshire waterbodies through the NHDES 305(b) and 303(d) surface water quality report and the NHDES Water Quality Report Cards available on the NHDES website. He explained that assessment unit ID's (AUID) have been added for wetlands in the state and NHDES will be doing a Phase I (computer exercise) assessment on each wetland AUID.

**Paul Currier** explained that the draft proposed language related to designated uses in HB 1305 would put designated uses into statute. He explained that designated uses and the current classification system do not work together. He presented an idea (handouts) for a revised, tiered classification system, similar to Maine's classifications for aquatic life.

The working group discussed the need to re-structure the existing classification system and whether or not they felt it was appropriate for the group to expand the scope of the working group to take that on. The general consensus was that it was worthwhile to explore alternative classification systems within this working group, understanding that they might not have completed work sufficiently to put legislation forward by October 2010.

**Ellen Weitzler** of EPA explained that EPA would be looking for the same or greater level of protection for waterbodies if the classification system was changed. If the protection was reduced, DES would need to perform a Use Attainability Analysis, but only for uses that cannot be obtained (e.g., urban streams). Existing uses cannot be removed. Tier classification systems are helpful for aquatic life use which tends to be poorly defined.

### Action items

The following action items are to be addressed prior to the next working group meeting:

- DES will distribute the link to the EPA database that lists the designated uses of other states.
- DES will update the Designated Uses Discussion Paper to include how the scope of the working group has expanded to include investigating alternative classification systems that better work with the water quality standards and designated uses.

## **Enforcement Working Group**

### Attendees

|                    |                   |                  |        |
|--------------------|-------------------|------------------|--------|
| Jim Fitch          | Woodard & Curran  | Donna Hanscom    | NHWPCA |
| Ken Rhodes         | CLD/AGC           | Ellen Weitzler   | EPA    |
| John Hodsdon       | NH Farm Bureau    | Diane Hanley     | LMAC   |
| Peter Rice         | NHMA              | Paul Currier     | DES    |
| Mike Metcalf       | Underwood Eng.    | Jillian McCarthy | DES    |
| Don Ware           | NHWWA             | Brandon Kernen   | DES    |
| Bill Schroeder     | NH Lakes          | Ted Walsh        | DES    |
| Jasen Stock        | NHTOA             | Jeff Andrews     | DES    |
| Larry Morse        | NHANRS            | MaryAnn Tilton   | DES    |
| Rep. Jim McClammer | House RR&D        | Ted Walsh        | DES    |
| Rep. Judith Spang  | House RR&D, Chair | Phil Trowbridge  | DES    |
| Rep. Sue Gottling  | House RR&D        | Collis Adams     | DES    |
| Mike Kappler       | House RR&D        | Eric Williams    | DES    |
| David Deen         | CRJC              |                  |        |

### Issues discussed

There were no changes to the proposed language. NHANRS, AGC, TOA, and NHWWA need to meet with their organizations to decide if they have any further objections.

DES stated that it was neutral on the need for the proposed changes because DES already has the authority for enforcement from RSA 485-A:22. The proposed changes are useful as clarification.

The group decided that it was worthwhile to continue with the changes, pending any objections from NHANRS, AGC, TOA, and NHWWA.

The minutes from 5/10/10 were accepted without changes. No chair was elected. Phil Trowbridge will continue to serve as staff to the committee.

### Action items

The following action items are to be addressed prior to the next working group meeting:

- It may be necessary to change “surface waters” to “waters” in RSA 485-A:12 depending on the new definition of surface waters.
- DES will generate a list of the assessment units that are considered cold water fisheries.
- NHANRS, AGC, TOA, and NHWWA will bring the proposed language back to their groups for review.
- DES will schedule a follow-up meeting with NHANRS, AGC, TOA, and NHWWA.